

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:06-cr-239-01

v.

HONORABLE PAUL L. MALONEY

McKINLEY LAVERNE UNDERWOOD

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant McKinley Laverne Underwood has filed a motion for modification or reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) based on the modification of the Drug Quantity Table with respect to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 706 and 711 of the United States Sentencing Guidelines modified the Drug Quantity Table with regard to cocaine base (crack cocaine). These modifications were made retroactive effective March 8, 2008. U.S.S.G. § 1B1.10(c).

However, Defendant Underwood is not eligible for a sentence modification. During the original sentencing on April 16, 2007, the defendant received the benefit of a two-level reduction due to a calculation error. Amendment 706 does not lower his guideline computation as recalculating the guidelines correctly produces the same guideline range as was determined at the

original sentencing. Accordingly,

IT IS HEREBY ORDERED that Defendant McKinley Laverne Underwood's motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (Dkt. #66) is **DENIED**.

Date: November 3, 2009

/s/ Paul L. Maloney

Paul L. Maloney

Chief United States District Judge